

Professionalism Commission Minutes, April 27, 2005

Judge Battaglia called the meeting to order at 4:00 p.m. Absentees included: B. Ferguson, F. Greer, N. Helfrich, W. Hudson, Judge Legg, L. Ostovitz, J. Otway, Judge Sweeney, B. Warnken. The Minutes of the March 23, 2005 meeting were approved.

Dana Williams' subcommittee continued its report on discovery abuse. The subcommittee approves the proposed re-publishing of *Maryland Discovery Decisions*, a book of trial court opinions on discovery issues, and suggested that somehow, the Court of Appeals might find a way to give these decisions more force. Question: of what precedential value are these cases? Further discussion was had on the subject of special discovery masters and, in complex cases, the assignment of a judge to handle all discovery disputes in a given case.

Additional suggestions included a web site on which trial court discovery opinions from around the state could be gathered in order to gain some consistency. In addition, flagrant offenders should be forced to pay the cost, when abuse of the process (not legitimate dispute) must be resolved by a judge. Retired judges represent a resource for the handling of discovery disputes. A discovery facilitator (can be a lawyer so trained) could be utilized in order to resolve problems before they get to a judge. Judges can assign disputes to a facilitator and, if abusers are made to pay, the system can pay for itself.

Anything that the Commission recommends must have the support of the judiciary, which historically, has been reluctant to involve itself to any large extent in discovery disputes.

Judge Salmon's subcommittee on mentoring continued its presentation. Judge Salmon pointed out that the Task Force on Professionalism specifically found that the decline in professionalism is tied, in part, to the decline in mentoring. In those jurisdictions with the highest level of satisfaction with the practice of law, mentoring plays an important role. Mentoring must be seen as an obligation on the part of experienced lawyers. Mentoring can be encouraged by connecting a mentoring assignment with the new admittee professionalism course, with mentors meeting their mentees on the day of the course. Law firms do much to mentor new lawyers, but bottom line considerations compete. The MSBA has a list of mentors published to the web site, but it is an underutilized resource. MSBA mentors' only qualification is to have been in practice for five years. Possibly, malpractice carriers do, or should, condition certain rates on proof of a firm's mentoring system.

Perhaps the best way to encourage mentoring is through local bar associations. Each of these organizations once had an ethics committee; but with the advent of the Attorney Grievance Commission, those committees became inactive, and mentoring activities slowed.

Everyone agrees that mentoring is desirable. Former MSBA President, Judge Richard H. Sothoron, Jr. spearheaded an effort to update and augment the list of MSBA mentors, but they are rarely called upon.

Another idea is to require each bar applicant to name a mentor to complete the application. If applicants must choose a mentor to be admitted, they will find a mentor. The Court of Appeals could consider giving pro bono credit for mentoring new lawyers.

The subcommittee will work to boil down suggestions to specifics.

Linda Lamone's subcommittee on the unauthorized practice of law reported also. Ms. Lamone met with Assistant Attorney General Bob McDonald, to discuss these matters. To avoid adverse publicity and possible anti trust action, it is agreed that any increased scrutiny and enforcement activity must focus on consumer harm, and must not be perceived as "turf protection" by lawyers. Toward this end, the Attorney General Consumer Protection Division is prepared to accept and investigate complaints.

It will be helpful to seek an Attorney General opinion as to when banks, CPAs, etc. are engaged in the practice of law.

The UPL subcommittee will develop and circulate a proposal on which the Commission will ultimately vote.

Norman Smith's subcommittee on the development of a professionalism course for experienced lawyers presented its first report. The primary questions have to do with who will take the course, how attorneys are referred (or forced) to the course, and whether such a course will be mandatory for some lawyers. One primary feeder source for the course will be the Attorney Grievance Commission's referral of lawyers who have agreed to accept Conditional Diversion Agreements. Possibly, judges may suggest, or even require, that those misbehaving before them take the course.

The subcommittee will consult with the Attorney Grievance Commission to determine specifically what complaints relate to professionalism in order to develop a suggested course curriculum.

Next meeting the subcommittee will flesh out suggestions into more concrete ideas.

The Subcommittee on updating the new admittees professionalism course, Chairperson, Debbie Potter, updated its report with suggestions and written recommendations, which were circulated. Other suggestions included the possibility of postponing the mandatory course until the second year of practice, and improving the materials. Also raised was the possibility that the course could be decentralized and given to local bar associations. One problem is presented by those admittees who plan immediately to leave the State.

At the end of the meeting, the Commission voted to accept the proposed meeting schedule for 2005-2006. Judge Battaglia raised the possibility of a half hour skit to be presented to the Commission. The idea was tabled for later consideration. Judge Battaglia adjourned the meeting. Various written subcommittee reports will be made a part of these minutes.